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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,016

04/19/2004

Takeshi Tsujimoto

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12/05/2006

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EXAMINER

PATEL, TAJASH D

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,016

Applicant(s)

TSUJIMOTO, TAKESHI

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/25/06 (election) and Amdt on 6/7/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☒ Claim(s) 7 and 8 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, which pertains to claims 1-4 and 7-8 in the reply, filed on September 25, 2006 is acknowledged.

2. This application contains claims 1-4 and 7-8 are directed to the following patentably distinct species of the claimed invention: Species I pertains to figures 1-7 and 15 and species II pertain to figures 8-14 and 16.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryksa (US 4,317,239) in view of Leutholt et al. (US 4,847,921). Bryksa discloses a headgear (10) for protecting the wearer from blows to the head, col. 3, lines 8-10 including a gear body worn about the head having an impact reducing material in a layer form that is inherently of a high impact foam material extending along the sides and has an eye opening being formed on a front face of the gear body with the impact material extending around the eye opening as shown in figures 1 and 2. Further, a thin rigid material is placed within the impact reducing material, col. 3, lines 7-8 as shown in figures 1 and 6.

However, Bryska does not show the impact reducing material being formed of a layer structure laminate having in addition a high elastic foam material.

Leutholt et al (hereinafter) discloses a headgear (10) for protecting the wearer from blows to the head, col. 1, lines 4-7 including a gear body worn about the head having an impact reducing material includes a layer structure laminate of a high impact material (46) on a back side with an high elastic material (52) on a front side, col. 3, lines 37-40 and as shown in figure 9. Further, an eye opening is formed on a front face of the gear body with the impact material extending around the eye opening as shown in figure 4.

It would have been obvious to one skilled in the art at the time the invention was made to substitute the impact material of Bryska having a thin rigid material therein with a layer structure laminate having both a high elastic material and a high impact material as taught by Leutholt as an alternative but equivalent means of absorbing force of impact when the device is worn or depending on the end use thereof. Also, it would have been obvious that the headgear of Bryska when view with Leutholt having both a high elastic material and a high impact material can each be made of a foam material depending on the availability at the time the device was made since such materials are considered equivalent in the art.

With regard to claim 3, it would have been obvious that the headgear of Bryska when view with Leutholt can include the high density foam material being positioned on the front/face side while the high elastic foam material is positioned on the back side as required for a particular application or end use thereof.

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Response to Amendment

5. The election made on 9/25/06 and amendment filed on 6/7/06 has been considered. In view of such a newly discovered prior art has prompted this office action to be made new-non Final and the arguments are moot. Further, claims 7 and 8 are subject to an election of species requirement.

Allowable Subject Matter

6. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

November 14, 2006



**TEJASH PATEL
PRIMARY EXAMINER**